IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4466 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

ISHVERBHAI G PATEL

Appearance:

1. Special Civil Application No. 4466 of 1990

MR HARDIK C RAWAL for Petitioner No. 1

MR BHARAT T RAO for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/02/2004

ORAL JUDGEMENT

This petition is filed under Article 227 of the Constitution of India challenging the award passed by the Labour Court on 12.02.1990 in Reference (L.C.V.) No. 910

of 1986 whereby the respondent was ordered to be reinstated with 75% back wages.

2. It is the case of the petitioner that respondent workman has remained unauthorisedly absent from 29.02.1984 to 05.03.1984. The respondent workman was to drive the bus in the morning hours but he did not report for duty causing inconvenience to the public at large. It was also averred that the respondent was in habit of remaining absent unauthorisedly without informing the authority. He remained absent from 15.02.1984 to 18.02.1984 for which he was given memo. In the inquiry, it was found that he was found to have been driving a private Metador and it was wrongly informed to the authority that he was ill. Based on this finding, the competent authority of the respondent Corporation had passed an order on 23.08.1984 dismissing the respondent from service.

3. Being aggrieved by the said order of the competent authority, the respondent has filed Reference before the Labour Court being Reference (L.C.V.) No. 910 of 1986 and the Labour Court vide its award dated 12.02.1990 set aside the order of dismissal and directed payment of 75% back wages to the respondent workman.

4. It is this order of the Labour Court which is under challenge in the present petition.

5. Mr. Hardik C. Rawal, learned advocate appearing for the petitioner submits that the award passed by the Labour Court suffers from serious errors of law and facts and it is, therefore, required to be quashed and set aside. The Labour Court has not correctly exercised its powers under Section 11-A of the I.D. Act. The petitioner Corporation is a public utility service and it is answerable to the public at large. Every employee is expected to inform the Management if he is to remain absent. The respondent workman was found to have been driving a private Metador bearing No. GJK-4756. He has, therefore, submitted that the Labour Court could not have passed the order with regard to reinstatement with 75% back wages and order of dismissal passed by the competent authority must have been confirmed by the Labour Court.

6. The petition was admitted on 22.12.1990 and stay against payment of amount of back wages was granted by this Court. However, there was no order with regard to reinstatement of the petitioner. It is, therefore, clear that pursuant to the order passed by the Labour Court, the respondent was reinstated to his original post. This

Court has passed an order on 19.02.2004 recording the statement of Mr. B.T. Rao, learned advocate to the effect that the respondent has expired on 21.07.1995 and he further stated that Corporation was aware of the said fact because by an order No. 883/95 dtd. 21.08.1995, the name of the respondent was removed from the establishment of the petitioner Corporation. The petition was filed in 1990 and respondent expired in 1995. Since then, no action has been taken by the petitioner Corporation to bring legal heirs of the respondent on record despite the fact that these facts were within the knowledge of the Corporation. Moreover, this Court has twice granted time to the petitioner on 14.10.2002 and 19.02.2004 and yet no steps were taken to bring the legal heirs of the deceased workman on record. Hence, the petition requires to be abated and it is accordingly abated.

7. Even otherwise, the Labour Court has appreciated the entire facts and circumstances of the case and after considering the evidence on record, awarding the back wages to the extent of 75% and this order of the Labour Court in no way can be said to be unreasonable which requires interference by this Court while exercising powers under Article 227 of the Constitution of India. The petition is, therefore, dismissed. Rule discharged without any order as to costs. Interim relief granted earlier shall stand vacated.

[K. A. PUJ, J.]

#Savariya#

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